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No. 00-1588

Supreme Court, U.S.
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IN THE

Supreme Court Of The United States

RONALD OMAN,

Petitioner,

-v.-

STATE OF INDIANA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Indiana

RESPONDENT'S BRIEF IN OPPOSITION TO CERTIORARI

STEVE CARTER
Attorney General Of Indiana
GARY DAMON SECREST
Counsel of Record

JOSEPH A. SAMRETA
Deputy Attorneys General
Office of Attorney General
Indiana Government Center South
402 W. Washington Street, 5th Fl.
Indianapolis, IN 46204-2770
Telephone: (317) 233-8290

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QUESTION PRESENTED

Did the Indiana Supreme Court properly find that the results from an administrative drug test are admissible in a criminal proceeding if obtained by a valid legal process externally initiated from the employment setting?

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JURISDICTION

This Court has jurisdiction of this petition under 28 U.S.C. § 1257(a).

OPINIONS BELOW

The opinion of the Supreme Court of Indiana ruling that toxicological test results from an employer administrative drug test are admissible in a criminal proceeding, if obtained by valid legal process externally initiated from the employment setting, is reported in *Oman v. State*, 737 N.E.2d 1131 (Ind. 2000). This opinion and the opinion of the Supreme Court of Indiana denying rehearing are both included in the Petition as Appendix 1.

CONSTITUTIONAL PROVISIONS

Petitioner's Constitutional Provision section is complete and correct.

STATEMENT OF THE CASE

On April 28, 1998, Petitioner Ronald Oman was the driver of a fire truck that was involved in an accident. Pursuant to a city ordinance, Oman was required to submit to a urine test and breath test to screen for illegal substances and alcohol. Police were informed that Oman had tested positive for marijuana and the test results were then subpoenaed from the lab. These results

confirmed that Oman had marijuana in his system at the time of the accident.

Oman was charged with operating a motor vehicle while under the influence of a controlled substance. Oman moved to suppress the test results but the trial court denied Oman's motion. Upon Oman's request, the trial court certified the issue for interlocutory appeal and the Indiana Court of Appeals accepted Oman's appeal. The Indiana Court of Appeals ruled that Oman's motion to suppress should have been granted and reversed the trial court's decision. The Supreme Court of Indiana then accepted transfer of the case, vacated the Court of Appeal's decision, and ruled that the results of Oman's administrative drug test could be used in a criminal prosecution against him if the results were obtained by a valid legal process, externally initiated from the employment setting. *Oman v. State*, 737 N.E.2d 1131, 1148 (Ind. 2000); Petition, App. 36-37. Oman's Petition for Rehearing was denied by the Indiana Supreme Court. Petition, App. 40.

Petitioner thereafter filed this petition for certiorari review asserting that the Supreme Court of Indiana incorrectly determined that Oman's

administrative drug test results could be used in a criminal prosecution.

REASONS FOR DENYING THE WRIT

I. Petitioner does not present a substantial federal issue.

The petition presents no compelling reason for this Court to grant discretionary certiorari review. In the absence of a compelling federal question in need of this Court's resolution, certiorari review should not be granted. *See* Sup. Ct. R. 10. The petition is devoid of any claim, much less a showing, that confusion or disagreement exists about the issue presented in this petition. Thus, there is no need to grant certiorari in this case. This Court should not spend its "scarce judicial resources" reviewing a case of no national importance. *See Oklahoma v. Tuttle*, 471 U.S. 808, 816 (1985).

II. The Supreme Court of Indiana properly determined that Oman's drug test results could be used in a criminal proceeding if they were obtained by a valid legal process externally initiated from the employment setting.

The Supreme Court of Indiana correctly found that Oman's administrative drug test results, if obtained by a valid legal process externally initiated from the employment setting, could be used in a criminal prosecution against him. Because the Indiana Supreme Court properly followed this Court's rationale in *Skinner v. Railway Labor Executives'Ass'n.*, 489 U.S. 602, 109 S.Ct. 1402, 103 L.Ed.2d 639 (1989) and *National Treasury Employees Union v. Von Raab*, 489 U.S. 656, 109 S.Ct. 1384, 103 L.Ed.2d 685 (1989), Oman's Fourth Amendment rights were not violated.

This Court in *Skinner* and *Von Raab*, discussed the constitutionality of government drug testing programs. There the Court stated that the purpose of the programs presented a special need that justified departure from the ordinary warrant and probable cause requirements. *Skinner*, 489 U.S. at 620-21, *Von Raab*, 489 U.S. at 666. Oman does not challenge

the constitutionality of the drug testing ordinance. Petition at 6. Rather, Oman claims that the Indiana Supreme Court's opinion allowing the use of administrative drug tests, in limited circumstances, answered a constitutional question which was left unanswered by *Skinner*. Specifically, Oman points to this Court's explanation in *Skinner*:

> We leave for another day the question whether routine use in criminal prosecutions of evidence obtained pursuant to the administrative scheme would give rise to an inference of pretext, or otherwise impugn the administrative nature of the FRA's program.

Skinner, 489 U.S. at 621, Petition at 5. Oman's assertion is incorrect.

The Supreme Court of Indiana clearly considered *Skinner* and implications on the Fourth Amendment before making its ruling. The Court stated:

> And while we acknowledge that the Supreme Court has left open the question of governmental *employers* using their administrative testing programs to pursue criminal drug use convictions against employees, *see*

> *Id.*, the record does not establish that occurred in this case. Here, the *prosecutor* was pursuing a criminal investigation based upon: (1) the knowledge that two fire trucks, with lights and sirens on, had collided during a fire run, and (2) a tip that one of the drivers had tested positive on his post-accident drug test.

Oman, 737 N.E.2d at 1143, Petition, App. 25. Thus, the Indiana Supreme Court specifically considered this Court's decision in *Skinner* and *Von Raab* and found this case to be different. As a result, the Supreme Court's decision in *Oman v. State* does not contradict nor expand on this Court's rationale in *Skinner*.

Moreover, the Indiana Supreme Court's decision is narrowly drawn. The Court's decision states, "toxicology test results from an employer administrative drug test are admissible in a criminal proceeding *but only if obtained by a valid legal process externally initiated from the employment setting*." *Oman*, 737 N.E.2d at 1148, Petition, App. 36-37 (*emphasis added*). The Court correctly noted that this case is different from one where an employee's positive test result forms the initial evidentiary basis for charging an individual. *Oman*, 737 N.E.2d at 1147-48, Petition, App. 34-

35. There such a use of a drug test would serve "the ordinary needs of law enforcement" in a manner disapproved by *Skinner* and *Von Raab*. *Oman*, 737 N.E.2d at 1147, Petition, App. 35. The Court emphasized:

> A prosecutor's subpoena *duces tecum* issued to a third party for the production of an employer-mandated drug test result is not relevant in purpose to a *valid criminal investigation* if the employee's positive test result forms the *initial evidentiary basis* for charging an individual with the commission of a crime.

Oman, 737 N.E.2d at 1148, Petition, App. 35-36. Here, Oman was "first and foremost, the driver of one of two fire trucks involved in an accident" and the accident was documented in two different reports. *Id.* This, and not Oman's drug test results, is what formed the requisite initial evidentiary basis for the prosecutor's legitimate inquiry into a possible criminal offense. *Id.*

The Indiana Supreme Court's decision carefully distinguishes cases where an employee's positive test result forms the initial evidentiary basis for charging an individual from one such as here where a criminal investigation is externally

initiated. In doing so, the Supreme Court of Indiana was careful to neither contradict nor expand on this Court's decisions in *Skinner* and *Von Raab*.

CONCLUSION

For the reasons stated above, the petition for writ of certiorari should be denied.

Respectfully Submitted,

STEVE CARTER
Attorney General of Indiana
GARY DAMON SECREST
Counsel of Record

JOSEPH A. SAMRETA
Deputy Attorneys General
Indiana Gov't Center South,
Fifth Floor
402 West Washington Street
Indianapolis IN 46204
Telephone: (317) 233-8290